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February 5, 2019

By DelaFile and Electronic Mail

Mark Lawrence
Senior Hearing Examiner
Delaware Public Service Commission
861 Silver Lake Blvd.
Cannon Building, Suite 100
Dover, DE 19904

RE: *In the Matter of the Formal Complaint of Richard Spinks DBA GiggieBugs, LLC
Against Delmarva Power & Light Company Regarding the Determination of a
Tariff Rate Category*
PSC Dkt. No. 18-1194

Dear Senior Hearing Examiner Lawrence:

Clean Energy USA, Inc. ("CEUSA") submits this response to your January 30, 2019, request that parties respond by February 5, 2019, with an explanation of how the Delaware Superior Court's decision in *Chesapeake Utilities v. Delaware Public Service Commission*, C.A. No. K17-A-01-001, Del. Super., June 7, 2017, affects the Petition to Intervene filed by CEUSA in the instant proceeding, if at all. As discussed below, the *Chesapeake Utilities* case does not affect CEUSA's Petition to Intervene *at all*. Therefore, because CEUSA filed a timely Petition to Intervene and neither Delmarva Power & Light Company ("Delmarva") nor the Delaware Division of the Public Advocate ("DPA") objected to CEUSA's intervention in this proceeding, CEUSA respectfully requests that its Petition to Intervene be granted.

1. This proceeding is not a natural gas utility rate case.

Chesapeake Utilities involved a natural gas utility rate and tariff change proceeding. In that case, the Court held that the Commission erred when it allowed an unregulated competitor to intervene in the natural gas utility's rate case to protect its own interests. *Chesapeake Utilities* at 7. The Court based its decision on Delaware's utility regulatory scheme, conferring upon the Commission "exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title." 26 Del. C. § 201(a).

The "Title" is Title 26 of the Delaware code, which includes, *inter alia*, Renewable Energy Portfolio Standards (Chapter 1, Subchapter III-A), Electric Utility Restructuring (Chapter 10) and Energy Efficiency Resource Standards (Chapter 15). Title 26 includes a wide array of policies mandating and supporting competition within the Delaware retail electricity market. Title 26 also specifically mandates Renewable Energy Portfolio Standards (Chapter 1, Subchapter III-A), the establishment of a market for electricity from renewable resources in Delaware and "to lower the

cost to consumers of electricity from these resources.” 26 Del. C. § 351. In enacting laws to effectuate these policy priorities and including the statutes in Title 26, the General Assembly tasked the Commission with regulation of Delmarva Power’s rates as necessary for carrying out the provisions of Title 26, including the renewable energy provisions and competition provisions. 26 Del. C. § 201. By contrast, Delaware does not have a restructured natural gas market. Moreover, there is no natural gas counterpart to the renewable energy policy mandates on the electricity side. The *Chesapeake Utilities* decision has no bearing on CEUSA’s intervention in a customer complaint proceeding involving renewable energy and electric tariff issues.

2. CEUSA is not a competitor to Delmarva.

CEUSA is a commercial and residential solar energy facility installer. Delmarva Power is an electric distribution utility. These entities are not competitors, like the association of propane energy providers representing the interests of members that directly compete against the vertically integrated monopoly natural gas distribution and supply utility in *Chesapeake Utilities*.

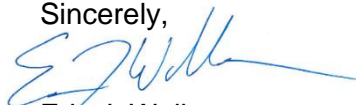
Chesapeake Utilities and the cases cited therein involved direct competitors to the utility’s service. It does not appear that any of the cases involved a solar facility installer intervening in a complaint proceeding involving an electric distribution utility tariff in a restructured electricity market. Therefore, *Chesapeake Utilities* has no bearing on CEUSA’s intervention request and it should be granted.

3. No party opposed CEUSA’s intervention request.

In *Chesapeake Utilities*, the natural gas utility opposed the intervention request at issue. Here, no party opposes CEUSA’s intervention. Therefore, CEUSA’s intervention should be granted.

CEUSA offers this letter not as a full brief on the *Chesapeake Utilities* case, but to point out a few of the critical distinctions between *Chesapeake Utilities* and the instant proceeding to explain why *Chesapeake Utilities* is not applicable to CEUSA’s intervention request. CEUSA reserves the right to respond further, as necessary, and raise additional arguments and points of law.

Sincerely,



Eric J. Wallace

(Motion for Admission *Pro Hac Vice* pending)

cc: (via email): Todd L. Goodman, Esq.
Richard Spinks
Regina A. Iorii, Esq.
Thomas D. Walsh, Esq.
Ronald S. Geller, Esq.